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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/667,420	09/21/2000	Mariko Okamoto	07336.0003-00000	8873

7590 12/21/2001

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EXAMINER

FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 12/21/2001

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/667,420

Applicant(s)

OKAMOTO ET AL.

Examiner

Blessing M. Fubara

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Examiner acknowledges receipt of paper number 8 filed 11/15/01.

Claim Rejections - 35 USC § 112

1. Claims 1-41 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is not maintained in light of the remarks filed 11/15/01.

Claim Rejections - 35 USC § 102

2. Claims 1,5, 23-26, 35, 37, 40 and 41 were rejected under 35 U.S.C. 102(a) as being anticipated by JP 11-021227. This rejection is not maintained in light of the arguments filed 11/15/01.

Claim Rejections - 35 USC § 103

3. Claims 1-41 remain rejected under 35 U.S.C. 103(a) as being unpatentable over JP 11-021227 and McEleney et al. (US 5,567,420).

4. Applicants agree that the prior art cited, alone or in combination does not teach surface treated pigments or fillers. Applicant's arguments filed 11/15/01 have been fully considered but they are not persuasive.

JP 11-021227 discloses a gel composition comprises 1.0-80.0 weight percent polyacrylamide, vaseline or ceresin, 0.1-20.0 weight percent polyoxyethylene sorbitan fatty acid ester as the non-ionic surfactant and organopolysiloxane (abstract). Applicants admitted on page 3 of the remarks filed 11/15/01 that Takeshi pigments and fillers may be used in Takeshi's composition and thus Takeshi's composition may comprise pigments and fillers.

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McEleney discloses a skin care composition. The composition comprises formulations selected from the group consisting of lotions, **gels**, cremes, moisturizers, mousses and ointments. The formulation comprises petrolatum, pigments, polyoxyethylene sorbitan fatty acid ester, anionic surfactants, polyacrylamide, preservatives and sunscreens. McEleney teaches polyacrylamide as a thickener and as a film former in amounts of from 0.1-10%. See abstract, column 5, lines 3-8, column 6, lines 30-67, column 8, lines 1- 45 and claims 10, 16, 17, 24 and 32.

The teachings of both references are directed to cosmetic composition. The JP reference in the translation provided by applicants suggests that pigments and fillers may be used in the gel composition. The expected result from the combined teachings of the reference is a composition comprising 1.0-80% polyacrylamide, vaseline or ceresin, 0.1-20.0 weight percent polyoxyethylene sorbitan fatty acid ester as the non-ionic surfactant, organopolysiloxane, petrolatum, pigments, preservatives and sunscreens.

Although the prior art is silent on treating the surface of the pigments and fillers, in the absence of unexpected results, one of ordinary skill in the art would expect the untreated surface of a pigment or filler to provide similar results as the treated surface. In general, where a composition is taught in the prior art, applicants must provide a showing of unexpected result for surface treated and untreated pigment or filler.

The rejection is maintained and no claim is allowed.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is 703-308-8374. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Blessing Fubara
December 20, 2001

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600